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## Anne Karalekas

*Seven years after the Senate investigative committee issued its final recommendations, how and why did the promise of fundamental reform in the conduct of U.S. intelligence activities fall so far short of political and public expectations?*

# Intelligence Oversight: Has Anything Changed?

In April 1976, culminating a year-long investigation of U.S. intelligence activities that included allegations of infiltration of domestic organizations, assassination planning, and drug testing, the Senate Select Committee on Intelligence issued its final report. With 183 findings, the report made three major recommendations: enactment of a legislative charter to provide clearly defined standards of conduct for the intelligence agencies; creation of permanent House and Senate committees to insure vigorous congressional oversight; and limitation of covert action activity (including propaganda, paramilitary, and political operations) to exceptional circumstances.

Seven years after the Senate investigative committee issued those recommendations, congressional efforts at charter legislation

have failed; the two congressional oversight committees are widely regarded as passive participants in the intelligence process; and the Reagan administration has escalated the level of covert action. How and why did the promise of fundamental reform in the conduct of intelligence activities, including collection, analysis, and covert action fall so far short of political and public expectations?

In the aftermath of the congressional investigations, changes in political mood, the inherent institutional limitations of the Congress, and conflicting institutional objectives all converged. An examination of these influences and their effects is useful both for understanding specific developments relating to the intelligence experience and for drawing general lessons about requirements for change.

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Time has already blurred the fact that the intelligence investigations conducted by the House and Senate Committees in 1975 and 1976, followed by the creation of the two permanent oversight committees, represented a major threshold in the history of congressional efforts to wrest some authority for intelligence activities from the executive branch.

The ghost of Allen Dulles, the avuncular head of the CIA during its most expansive years, would undoubtedly shudder at the procedural and legal requirements that have been placed on his agency since the days when an afternoon bourbon with Senator Richard Russell and a breakfast chat with Representative Carl Vinson satisfied the need for accountability of activities ranging from the successful coup against President Jacobo Arbenz Guzmán of Guatemala in 1954 to the covert funding of international student groups and foundations.

Since 1975 the changes have been extensive. First, in addition to the existence of the two congressional oversight committees, greater accountability exists within the executive branch. Expanded authority for the intelligence agencies' offices of general counsel and inspector general and the creation of the Intelligence Oversight Board are intended to provide an internal system of monitoring and control, while the Department of Justice and the attorney general have an expanded role in reviewing and approving domestic and foreign intelligence activities. Second, the executive orders issued successively by Presidents Ford, Carter, and Reagan have imposed unprecedented restraints on intelligence activities, and assumed explicit accountability in a manner that never existed before 1976. Finally, perhaps the greatest and least acknowledged change has been the increased public awareness of intelligence and the accompanying scrutiny and public debate. Seven years ago intelligence issues were considered far beyond the public's right to know. Yet these changes do not

approach the recommendations made at the close of the congressional investigations. Charter legislation has not been enacted; questions about the effectiveness of the congressional oversight process persist; and the Reagan administration's covert action initiatives have provoked a major political debate. How and why did congressional reform efforts falter?

### CHARTER LEGISLATION

In 1976, when the Senate closed its investigation of the intelligence agencies by recommending the development of charter legislation, the expectation of Democratic and liberal Republican committee members was that whatever excesses and ambiguities existed could be corrected by establishing statutory limits for the intelligence agencies' activities, particularly domestic intelligence surveillance and covert action. By working out a legislative mandate, a majority of the committee hoped that both the executive branch and the intelligence agencies could be made accountable for their activities and that the agencies' damaged stature could also be restored through congressional hearings and public debate, generating a new consensus on the intelligence agencies' role. Thus, when the permanent oversight committee was created in May 1976, committee members had a ready agenda item—the development and passage of charter legislation for the CIA, FBI, and NSA.

Although the committee devoted nearly three years to developing a charter, the legislation failed, ultimately lacking support within the Congress, the Carter administration, and the intelligence community. The choice of tactics was one reason. It is widely agreed that the committee blundered badly in 1978 by submitting as its first circulating draft a 283 page bill, a complicated compendium of procedures, prohibitions, and organizational arrangements. By that time, the brief window of opportunity for change had closed, and the effort to be deliberate and comprehensive had incurred irreparable costs.

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The Senate Committee's position on charters was also undoubtedly weakened by the absence of a comparable commitment on the part of the House Permanent Select Committee on Intelligence, created in 1977. Without the legacy of the Church Committee and perhaps consciously seeking to distance itself from the Senate's agenda, the House remained neutral on the charter issue, leaving the Congress divided and weakened in the face of growing opposition to the charter effort from the intelligence agencies and the executive branch, opposition at least to the form that the charter draft had taken in 1978 and again in 1979, when a somewhat revised version was reintroduced.

Fundamentally, however, the failure of charters is a commentary on the fragile consensus advocating such legislation and the quickly changing political environment. Although in 1976 widespread agreement existed both within the Congress and the intelligence agencies on the general principle of charter legislation, the consensus shattered under the pressure of conflicting objectives. First, the intelligence agencies were eager for a document that would legitimize their activities and thereby protect them from future accusations of wrongdoing. In effect, they saw the charter as an authorization document. Second, within the Senate Intelligence Committee itself sharp ideological divisions surfaced. At one end of the political spectrum, liberal Democrats Joseph Biden (D-Del.) and Birch Bayh (D-Ind.) held reformists views and saw the charter as a means of preventing the recurrence of abuses such as the FBI harassment of Martin Luther King and the infiltration of domestic organizations. At the other end, conservatives, including Malcolm Wallop (R-Wyo.) and Richard Lugar (R-Ind.) were representative of the changing political climate and were unwilling to support a restrictive document that in their view would shackle the intelligence agencies. Thus, to the extent that charter objectives were defined, two objectives existed and they were contradictory.

Finally, although the Carter administration came to office with a strong commitment to

reforming the CIA, and Vice President Walter F. Mondale had been a key member of the Senate investigative committee, the administration's commitment to charters waned over time both because it could not reach agreement with the Congress and because its initial view of intelligence altered after the Soviet invasion of Afghanistan and other foreign policy developments led administration officials to rely increasingly on CIA capabilities abroad.

The failure of charters was perhaps a major turning point for the Senate Committee, sapping the momentum and institutional vitality required to propel diffuse political interests. Measured in terms of time, human resources, and emotional commitment, the committee's investment in charter legislation was enormous. Charters had in effect become the Senate Committee's *raison d'être*. From 1976 through 1979 its institutional identity was inseparable from the charter issue.

This is not to say that the committee did not carry out and develop other oversight functions: budget review; procedures for gaining regular access to classified materials; sporadic efforts to evaluate the quality of intelligence analysis; and covert action review, among others. The charter issue, however, transcended all others and absorbed the majority of staff and members' time and effort. Having staked much of its initial purpose on a three-year effort that failed, the committee lost a platform for debate, a major focus of activity, and a source of influence. As a result, the committee's overall political position diminished.

More important, the failure to develop charter legislation has perpetuated the ambiguities and suspicions surrounding U.S. intelligence activities. The definition of standards for domestic and foreign collection and operations has been left to the three executive orders, issued by Presidents Ford, Carter, and Reagan, with provisions that have varied considerably. For example, the current executive order broadens the authority of the intelligence agencies to collect information from Americans both domestically

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and overseas and specifically authorizes the CIA to conduct covert operations domestically, which the Carter executive order had prohibited. With each new administration, issues such as domestic surveillance and the use of media and academics have been, and will continue to be, renegotiated. This in turn provokes renewed public scepticism, confusion on the part of CIA employees at home and in the field, and protracted debate in the Congress and the White House.

Three factors explain Congress' failure to enact the investigative Committee's centerpiece recommendation:

- The concept of a legislative charter bore little relationship to the political reality. Although in 1976 an apparent consensus existed on the need for a statute, no concrete proposals had been tested across the broad political and bureaucratic spectrum. In the face of specific legislative language two years later, the apparent consensus proved more illusory than real in part because of the changed political environment but also because few people in the Congress or the executive branch had clearly considered what a charter could or should do.
- The definition of the problem biased the attempted solution. To the extent that the investigations had emphasized the extremes in the intelligence agencies' activities—e.g., assassination planning and drug testing—that emphasis resulted in disproportionate reliance on legislative and statutory reform to remedy all the issues that had been raised. Most intelligence activities, however, were not susceptible to legal codification. The qualitative aspects of intelligence analysis, the intricacies of clandestine collection, and problems of cover, among others, simply did not find ready solution in the fixed language of the law.
- Intelligence is probably the ultimate insiders game, and in the absence of a strong and/or vocal constituency, Congress is unlikely to act. Because intelligence reform had no national or regional political base, Congress was never pushed to resolve the problems and dissensions that plagued the charter effort. While intelligence is-

sues had and continue to have constituent pockets among civil liberties groups and among some foreign policy observers, neither constitutes a major group to whom members of Congress feel beholden.

### VIGOROUS CONGRESSIONAL OVERSIGHT?

At the close of the congressional investigations in 1976, the provision for the creation of permanent oversight committees was considered virtual assurance of future accountability for the intelligence agencies. As the Reagan administration has moved toward more permissive standards for the intelligence agencies, questions about the overall effectiveness of congressional oversight remain.

Today, the most frequent issue raised about both the House and Senate Committees is whether committee members are engaged in vigorous scrutiny of the agencies under their jurisdiction. Recent legislative initiatives to prohibit U.S. direct or indirect paramilitary assistance in Nicaragua have come only after prolonged escalation of U.S. involvement and considerable public debate. Congress' delayed reaction on this issue and more fundamentally, its shift from being the intelligence community's severest critic in 1975-76 to becoming its frequent silent partner involve a complex mix of institutional conditions, personalities, and a changing political climate.

Although the House and Senate Committees have comparable (though not identical) legislative, budgetary, and covert action responsibilities, they emerged from very different legacies. Since its creation in 1977 the House Permanent Select Committee on Intelligence has been chaired by Representative Edward P. Boland (D-Mass.), colleague and close friend of Speaker Thomas P. O'Neill. It is widely believed that O'Neill named Boland chairman to restore confidence in the House's capacity to deal with sensitive intelligence matters following the aborted Pike Committee investigation.

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With that mandate, the House Committee was heavily staffed by former intelligence community careerists and quickly adopted a quiescent posture, with a few notable exceptions, including a 1979 staff report evaluating U.S. intelligence reporting preceding the overthrow of the shah and a 1982 staff report critical of the Reagan administration's intelligence on Central America.

While the House Committee has maintained a relatively fixed course since its inception, the Senate Committee has more vividly mirrored the changing political environment over the last six years. Under a rotating chairmanship policy, three Senators, Daniel K. Inouye (D-Hawaii), Birch Bayh (D-Ind.), and currently, Barry M. Goldwater (R-Ariz.), have led the committee.

Marking the transition between the investigations and ongoing oversight, Inouye

believe that Goldwater best summarized his own position on congressional oversight when in July 1981 he stated, "I don't even like to have an intelligence committee. I don't think it's any of our business." The convergence of an administration committed to greater spending and looser restrictions for intelligence and less than assertive House and Senate committee leadership have raised doubts about Congress' role as an effective counterweight.

During the past four years the House and Senate Intelligence Committees have gained approval for three major pieces of legislation: (1) the Foreign Intelligence Surveillance Act of 1978, which prescribed procedures (including warrant requirements) for electronic surveillance conducted in the United States for the purpose of acquiring foreign intelligence information; (2) the In-

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adopted a less adversarial posture, while retaining a measure of tough-minded detachment. By the start of his chairmanship, the public had been saturated with revelations and discreditations of Washington officialdom, and concerns about the damage incurred by the investigations had already begun to emerge.

Inouye established the rotating chairmanship precedent by stepping down in 1978, after two years. During Birch Bayh's 1978-1980 term as chairman, the charter effort dominated the committee's work, reflecting the agenda established by the investigative committee and to some extent, Bayh's own civil liberties interests.

With the 1980 election, which brought Bayh's defeat and the startling Republican majority in the Senate, Barry Goldwater assumed the chairmanship. Many observers

telligence Oversight Act of 1980, which provided broad statutory recognition for congressional oversight and repealed the 1974 Hughes-Ryan Amendment, thus limiting covert action reporting from eight congressional committees to the two intelligence committees (although the House and Senate Appropriations Committee have retained access to covert action budgetary information); and (3) the "Graymail" Bill (the Classified Information Procedures Act of 1980), which established procedures for introducing and protecting classified information in trial proceedings.

It is clear that neither committee has formally staked out a dominant jurisdiction. Since 1976 their achievements have been uneven: enacting scattered legislation; securing their position as permanent entities; taking some budgetary initiatives, particularly in

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technical collection; and engaging in skirmishes over successive executive orders. Both committees have made sporadic attempts to address the issue of intelligence quality and analysis, the intelligence agencies' most valuable and most neglected commodity. Neither committee, however, has mounted a sustained effort.

The committees' record raises questions about whether issues must reach thresholds of danger and intensity before Congress will assert itself—the most striking recent example being developments in Central America, which have stirred members on both committees both to publicly express concern and to invoke Congress' budget authority to potentially limit U.S. involvement. Yet what has prevented the intelligence committees from acting aggressively on other less dramatic issues and what has prevented them from acting sooner on the Central American issue? Three factors are at work:

- The committees suffer from the lack of traditional political advantage for the assigned members. While the period of the investigations provided high visibility and assured headlines, ongoing oversight is shrouded in secrecy with no public constituency. The principal benefit the committees offer their members is access to national security information. Some members have come to regard the committee as an entrée into foreign and military policy issues—in the words of one staff member “a poor man's Foreign Relations Committee.” For other members, the assignment may assist with other responsibilities, including the Judiciary, Foreign Relations, and Armed Services Committees. What both situations suggest is that the committees may be regarded as sources of knowledge rather than as opportunities for exercising jurisdictional prerogatives. Both committees share the common characteristics of their insulated environments. For reasons of security, they operate out of the realm of public hearings, floor debates, and backroom caucusing that characterizes the mainstream of congressional activity. They have noth-

ing to trade and little legislation to sponsor. In large part committee members are insulated from the scrutiny of their colleagues and from external political constituencies. Lacking an outside audience, committee members serve paradoxically as both prosecutor and defense attorney for their only real client—the intelligence agencies themselves.

- The committees face the conflicting objectives of maintaining the confidence of the intelligence agencies and adopting a detached and probing posture. This is a dilemma for all oversight committees but for the intelligence committees, the situation is extreme. The intelligence committees are heavily dependent on the agencies for the information required to execute their oversight responsibilities, creating strong incentives to establish cooperative relationships. For example, it is likely that the Senate's classified report on the capacity of U.S. intelligence to verify the provisions of the SALT agreement depended totally on the provision of data and information by the agencies themselves. Although other committees may have similar constraints, they are not exclusively dependent on the agencies under their jurisdiction. The Foreign Relations and Foreign Affairs Committees may draw on not only the State Department but also on Defense, Treasury, and Commerce—in addition to seeking public reaction and pursuing information generated by the media. To a much greater extent, the intelligence agencies serve as the principal conduit of information to the intelligence committees.
- With regard to secrecy and the protection of classified information the committees have assumed the role of Caesar's wife. Because the Congress historically has been regarded as unable to maintain requisite security and secrecy on classified matters, the intelligence committees continually have had to prove their reliability. Questions were repeatedly raised about the Church Committee's ability to contain the classified material made available to it. Throughout the investigation both staff and committee members recognized that without an unblemished security record, the

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likelihood of the creation and acceptance of a permanent oversight committee would be greatly diminished. The unauthorized disclosure of the Pike Committee's report only reinforced the sense that Congress had yet to prove itself worthy of entering the privileged world of intelligence. That shadow has lingered. More recently, security considerations have limited and constrained the committees' role within the House and Senate. The 1980 Intelligence Oversight Act included a provision that "Each of the select committees shall promptly call to the attention of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees." It was only in April of this year, however, that the House Committee began considering procedures by which such matters would be conveyed to other members. In effect, the committees' need to demonstrate their ability to deal with sensitive national security matters has inhibited their capacity to inform both public and congressional debate.

### COVERT ACTION

During the period of the investigations covert action absorbed the major share of congressional and media attention, and it remains the most vexing aspect of the CIA's multifaceted mission. Although the Carter administration initiated little covert action in its first two years, by the end of the administration covert action reportedly escalated to include the development of agents in place for the aborted Iranian rescue operation and the supply of arms to Afghan guerrillas.

In recent interviews, members of Congress and executive branch officials repeatedly expressed concern about the Reagan administration's increased reliance on covert operations both in terms of the total number of activities and the scale of individual operations. Among the widely reported activities:

- Funding and equipping Nicaraguan paramilitary groups attempting to overthrow the Sandinista government from bases in Honduras and other neighboring countries.

- Escalation of aid to the Afghan guerrillas, begun under President Carter. According to recent press reports, the operation includes additional financial and logistical support from Saudi Arabia, Egypt, and Pakistan.
- Reported involvement in the elections on Mauritius, the small Indian Ocean island near Diego Garcia. Press reports have stated that the United States provided covert assistance to the incumbent president, who subsequently failed to capture a single parliamentary seat in the June 1982 elections.

While congressional involvement in covert action exists in the form of notification of specific activities, the ability of Congress to limit covert action has proven tenuous at best. Under procedures established in the Congressional Oversight Act of 1980, the House and Senate Intelligence Committees are notified following a presidential finding that a particular activity is necessary or advisable. Although the committees can question a finding and thereby exert informal pressure, members have no formal authority to approve or disapprove any activity. Implicit in the arrangements is the subtle threat that if Congress is not informed, it cannot and will not support the president in the event of a disclosure. Also implicit is the threat that if committee members disagree with a finding and the president and intelligence agencies do not respond, committee members themselves may make a disclosure that would discredit and abort the activity, but this is a radical action that neither committee has taken and is unlikely to take.

In the face of an administration committed to enhancing U.S. covert action capabilities, Congress has few means to establish limits. The Reagan administration has invested heavily in covert action. Given the deployment of dollars and resources, covert action quickly takes on a life of its own, making it increasingly difficult for the Congress to be informed about the scope and character of new activities or to monitor ongoing operations. While congressional budget authority provides some opportunity for scrutiny and

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control, the budget remains a blunt instrument. It does not allow for fine tuning and usually represents infrequent extremes of action, e.g., the 1976 Clark Amendment, banning all overt and covert aid to Angola, and the Boland Amendment, prohibiting the use of funds for the purpose of overthrowing the Nicaraguan government or of provoking a military exchange between Nicaragua and Honduras.

Most recently, the House Committee voted to cut off funds for either direct or indirect covert support of military or paramilitary operations in Nicaragua, while the Senate Committee has decided to impose a September 30 review deadline on the administration before authorizing additional funding. Whatever the outcome on these Central American initiatives, they remain belated responses to an extreme situation. Congress presumably was informed about and did not object to the initial policy decision to interdict supplies and arms from Nicaragua to El Salvador and to aid the anti-Sandinista forces as a means of "raising the cost" of Nicaraguan support to the Salvadoran guerrillas. Yet because under present arrangements Congress is not in a position to approve covert activities and because members are dependent on the executive branch for information, the situation must approach virtually a crisis point before Congress is likely to intervene. In effect, the intelligence committees' actions regarding Nicaragua are an admission of the failure of the congressional oversight process to effectively monitor and impose limits on operations apparently initiated well over a year ago. Congress may brandish its budget authority and its potential to draw attention to particular issues but its capacity to establish limits on ongoing operations is constrained. Two major conclusions emerge from the present configuration between the Congress and the executive branch:

- Short of actual veto power, which Congress is unlikely to acquire, the balance on covert action will continue to rest with the executive branch. Whatever guidelines may be proposed will be general enough to allow

considerable latitude on the basis of national security considerations. These circumstances place a high premium on the individual judgments and predilections of congressional and executive branch officials. The fact that covert action has the apparent advantages of quick implementation and limited executive branch approval requirements will always make it an easy option. Confronted with the frustrations and complexities of diplomatic, military, and economic policy, policymakers may look to covert action as a quick possibility for action and resolution—whatever the risks. For the Congress, the burden is to assert its own will and judgment early enough to make a difference. The task is difficult but not impossible.

- In the absence of clear, integrated foreign policy objectives, any administration may be tempted to seize on covert action as a vehicle for achieving policies that are otherwise lacking. While the Reagan administration has adopted a confrontational geopolitical posture and the rhetoric of a strong anti-Soviet foreign policy, it has failed to develop an integrated strategy in support of that policy. In this kind of policy vacuum, covert action becomes the substance of policy rather than a supporting dimension of policy. The Nicaraguan example illustrates this point. While the United States appears committed to fostering moderate forces through covert assistance, it is unclear what viable alternatives exist to the present Nicaraguan government. The Nicaraguan private sector is fragmented, and liberal political leadership is weak. The country's long-standing economic problems have been exacerbated by the economic sabotage carried out by the guerrillas. In this situation, reliance on covert activities may inhibit the incentives to forge a diplomatic, military, or economic policy.

#### NET EFFECTS

Seven years ago, Congress raised the question of how to reconcile the conduct of secret intelligence with the principles of democratic government. The assumption

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was that the moral and constitutional ambiguities inherent in intelligence activities could be addressed and put to rest. Today, the ambiguities are unresolved and are likely to remain so for the immediate future.

What has decidedly changed is that questions related to intelligence have become open to scrutiny beyond the closed doors of practitioners. And while some observers view the present circumstances, particularly the relaxation of restrictions, as a natural swing of the pendulum or an appropriate return to pre-Watergate values, the fact remains that fundamental relationships have changed. The public has been exposed to a continuous stream of news stories related to present and former CIA employees—pre-publication review issues involving Frank Snepp and John Stockwell; espionage convictions against Christopher Boyce, John Dalton Lee, and William P. Kampiles; and most recently, the trial of Edwin Wilson, convicted on charges of smuggling guns to Libyan agents. Books and monographs related to the intelligence agencies have also generated sustained interest: both the *Washington Post* and the *New York Times* have reporters specifically assigned to the intelligence beat; colleges and universities have begun to include intelligence as an integral part of government and national security courses. Pressures for disclosures are greater, and heightened public and media sensitivities exist. These are likely to be long-term conditions, creating additional pressures on both the Congress and the executive branch, with the issue of covert operations in Central America providing the most recent example.

These pressures emanate from the pressures on foreign policy. Increasingly, U.S. officials' foreign policy assessments and actions are being questioned, requiring justifications and information to support their positions. Since intelligence serves as a source

of both analytic and operational support to U.S. foreign policy, the way in which senior policymakers choose to make use of intelligence capabilities will also be subject to public scrutiny. For example, questions continue to be raised about the administration's use of intelligence on Central America to support its policy objectives in that region. Unquestionably, these conditions make the conduct of intelligence and foreign policy more difficult. They represent, however, a political reality that now encompasses the intelligence agencies, the Congress, and the executive branch.

In the short term the effect of the investigations and the revelations of wrongdoing by the CIA shattered existing presumptions about the manner in which the CIA was to operate. No alternative set of assumptions has yet emerged. The reasons are several. First, and perhaps most important, no foreign policy framework has emerged against which intelligence priorities can be recast. The CIA was created to serve and support the United States as a Cold War protagonist in a bipolar world. U.S. policy considerations have become far more complex, and just as the clear formulation of policy has lagged behind international developments, so the intelligence apparatus has also been slow in coming to terms with those developments. Second, the expectations for reform that emerged from the period of the congressional investigations were disproportionately fixed on statutory and procedural remedies for issues that remain difficult both to define and to reach agreement on in those terms. Finally, the dramatic change in the political environment during the past seven years has encouraged extremes in attitude about intelligence activities and has left little opportunity for consideration of intelligence as the apolitical resource it was intended to be.

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